

REMARKS

Claim Rejections

Claims 9, 11 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mochel (U.S. 5,261,430) in view of Urso (U.S. 5,722,440) and Pastl (U.S. 2,467,221). Claims 12 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mochel in view of Kennedy (U.S. 4,011,616). Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mochel in view of Imai et al. (U.S. 5,170,809).

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

Claim Amendments

By this Amendment, Applicant has canceled claim 15 and has amended claim 9. It is believed that amended claim 9 specifically sets forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and defines subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The primary reference to Mochel discloses an oral hygiene system including a handle part (1) having a receiver slot (21), a motor (17), and an eccentric weight (18), and floss cartridge holder (3) with a disposal floss cartridge (4), and a tool mounting stem (14) inserted into the receiver slot.

Mochel does not teach a working section moving the link rod along a conical shaped vibration axis, nor does Mochel teach the link rod and the floss bow being integrally formed. On page 2 of the outstanding Office Action the Examiner admits that "Mochel does not disclose the floss bow having a securing screw and a securing rod".

The secondary reference to Urso discloses a bite device including a flosser (11) including tines (16) with a tine groove (36), a bite member (10), a floss tensioning button (34), and a floss spool (28).

Urso does not teach a working section connected to an interior of the holder body and having a motor and an eccentric hammer creating a vibration and moving the link rod along a conical shaped vibration axis; nor does Urso teach the link rod being removably connected to the insert section of the holder body.

The secondary reference to Pastl discloses a dental floss applicator including a handle (1) with arms (3), and a recess (6), for a spool of dental floss (7).

Pastl does not teach a working section connected to an interior of the holder body and having a motor and an eccentric hammer creating a vibration and moving the link rod along a conical shaped vibration axis; nor does Pastl teach the link rod being removably connected to the insert section of the holder body.

The secondary reference to Kennedy discloses a teeth cleaning device including a U-shaped base (23), a brush (22) having a bristles (35), a vibrating mechanism (32), and rod connecting the base to the vibrating mechanism.

Kennedy does not teach a working section connected to an interior of the holder body and having a motor and an eccentric hammer creating a vibration and moving the link rod along a conical shaped vibration axis; a link rod having a floss bow section; the flow bow section having two floss expansion ends, each of the floss expansion ends having a retaining notch for securing a floss material between the two floss expansion ends; nor does Kennedy teach the floss bow section has a securing screw and a screw rod configured to fastened ends of the floss material.

The secondary reference to Imai et al. discloses a power dental floss device including a hand grip (10), an eccentric motor (20), a rechargeable battery (30), and an output shaft (40). A floss attachment (70) having a stem (72), a socket (73), a holder (74), and floss (71). The floss attachment is connected to the hand grip.

Imai et al. do not teach a working section moving the link rod along a conical shaped vibration axis; the floss bow section having two floss expansion ends, each of the floss expansion ends having a retaining notch for securing a floss material between the two floss expansion ends; nor do Imai et al. teach the floss bow section

has a securing screw and a screw rod configured to fastened ends of the floss material.

Even if the teachings of Mochel, Urso, Pastl, Kennedy, and Imai were combined, as suggested by the Examiner, the resultant combination does not suggest a working section moving the link rod along a conical shaped vibration axis.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking

this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Mochel, Urso, Pastl, Kennedy, or Imai that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. §103.

Neither Mochel, Urso, Pastl, Kennedy, nor Imai et al., disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: April 26, 2004

By:


Bruce H. Troxell
Reg. No. 26,592

TROXELL LAW OFFICE PLLC
5205 Leesburg Pike, Suite 1404
Falls Church, Virginia 22041
Telephone: 703 575-2711
Telefax: 703 575-2707